

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

JUNTA DEL CENTRO DE SALUD COMUNAL
DR. JOSE S. BELAVAL, INC.

Employer

and

Case 24-RC-8662

UNIDAD LABORAL DE ENFERMERAS(OS)
Y EMPLEADOS DE LA SALUD (ULEES)

Petitioner

SUPPLEMENTAL DECISION ON CHALLENGED BALLOT

Pursuant to a Decision and Direction of Election issued on February 26, 2010, by the Regional Director, an election by secret ballot was conducted on March 26, 2010, under the direction and supervision of the Regional Director among all regular full time and part time professional physicians working at the Employer's facility in San Juan, PR; but excluding all other employees, guards and supervisors as defined in the Act, to determine whether or not said employees desired to be represented for the purpose of collective bargaining by Unidad Laboral de Enfermeras(os) y Empleados de la Salud (ULEES), hereinafter called Petitioner.

The tally of ballots, duly made available to the parties, revealed the following:

Approximate number of eligible voters	9
Void Ballots	0
Votes cast for Union	4
Votes cast against participating labor organization	3
Valid votes counted	7
Challenged ballots	1
Valid votes counted plus challenged ballots	8

Challenges are sufficient in number to affect the results of the election.

No objections to the election or to conduct affecting the results of the election were filed.

Pursuant to the Stipulated Election Agreement, and in conformity with Section 102.69 of the Board's Rules and Regulations, the Regional Director caused an investigation to be made of the challenged ballot and now the undersigned sets forth his findings and conclusions and recommendations with respect thereto.

THE CHALLENGED BALLOT

During the election, the Employer challenged the ballot of physician Vilma Cintron claiming that she was a supervisor within the meaning of Section 2(11) of the National Labor Relations Act (herein "the Act"). By letter dated March 26, 2010, the Employer was requested to submit a written statement of its position together with any evidence that it had to support the same. On April 5, 2010, the Employer submitted a two paragraph letter, attached hereto for convenient reference, that merely reiterated the basis for its challenge of Ms. Cintron, to wit, that she "was challenged because she is a supervisor under the definition of the National labor Relations Act...and thus, ineligible to vote and be part of the petitioned bargaining unit." However, the Employer did not submit any evidence in support of its position. The Employer made a similar claim, albeit with respect to all the physicians in the above unit, at the pre-election hearing held to determine, inter alia, the appropriateness of the bargaining unit.

In the Decision and Direction of Election heretofore issued on February 26, 2010, the Regional Director concluded that the petitioned-for physicians were not supervisors and thus, directed that an election be conducted therein. A Request for Review of the Regional Director's Decision and Direction of Election was due on March 12, 2010, but not filed. In a letter dated March 15, 2010, the Employer's request for an extension of time to file such review was denied as untimely.

As noted, although requested to do so, the Employer has provided no evidence in support of its election challenge of Ms. Cintron's vote. As such, it appears that the Employer is essentially raising the same issue that it raised at the pre-election hearing which the Regional Director rejected and whose decision was not properly appealed. I

also find that the Employer has not provided any facts that would allow the undersigned to reverse the Regional Director's decision and sustain the Employer's challenge to Ms. Cintron's vote. I note particularly that the Employer included Ms. Cintron's name in the Excelsior list that it submitted to the Region before the election. Accordingly, I recommend that the Employer's challenge to Ms. Cintron's vote be overruled.

CONCLUSION AND RECOMMENDATION

For the reasons stated above, having concluded that the challenge to the ballot of Ms. Cintrón be overruled,

IT IS HEREBY ORDERED, that her ballot be opened, and counted on a date, time and place to be scheduled hereafter, and that thereafter an appropriate Revised Tally of Ballots be prepared and served upon the parties and the appropriate certification issue.

Right to File Request for Review: Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this Supplemental Decision by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the

Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **May 5, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed instructions. The

¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated on April 22, 2010, at San Juan, Puerto Rico.



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